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DEPARTMENT OF LAND AND NATURAL RESOURCES**

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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Approved Minutes of the Kaua'i-Niihau Island Burials Council**

DATE: Wednesday, March 23, 2011  
TIME: 9:00 a.m. to 12:00 p.m.  
PLACE: Lihue Public Library Conference Room, 4344 Hardy Street, Lihue, Kaua'i 96766

**I. CALL TO ORDER / ROLL CALL TO ESTABLISH QUORUM /OPENING PULE**

Chairman Kunane Aipoalani called the meeting to order at 9:12 a.m.  
Roll call established a quorum with six (6) members present to convene today's meeting.  
An opening pule was offered by Chairman Aipoalani.

**II. INTRODUCTION OF COMMISSIONERS, SHPD AND AG STAFF**

KNIBC Members present: Kunane Aipoalani, Chairman  
Keith Yap, Vice-Chairman  
Sandi Quinsaat  
John Kruse  
Jimmy Fujita  
Mike Loo

KNIBC Members excused: Barbara Say Leiana Robinson  
Dee Crowell Nathan Kalama

SHPD Staff: Mike Vitousek, SHPD Archaeologist  
Phyllis Coochie Cayan, History & Culture Branch Chief

Deputy Attorney General: There was no AG staff in attendance.

Public Attendees: Mahealani Sylva Bob Rechtman Jody Allione  
Kalanikumai Hanohano Lahui Kanaka Manini  
Cheryl Lovell-Obatake Ted K. Blake  
Waldeen Palmeira Nancy McMahon James Alalam

**III. OPENING REMARKS**

Chairman Aipoalani welcomed all to the KNIBC meeting and noted a quorum of six members to convene today's meeting. Also, Aipoalani said the council meeting ends at noon due to another meeting scheduled for the conference room. He allowed 5 minutes testimony per person and another chance once everyone had spoken on each item.

Chairman Aipoalani upon request by the State Parks representative Russell Kubota asked to have Item V. Business (B) changed to (A) due to another scheduled meeting after the KNIBC. The council unanimously agreed to change Item A to become the new item B; and Item B to become the new Item A on the agenda. The speakers for Item A were agreeable to the change of order.

IV. Approval of Minutes for January 19, 2011.

- NOTE: There was no KNIBC meeting held for the month of February, 2011 as there were no business items for the council's consideration.

Motion by Vice-Chairman Yap, seconded by Sandi Quinsaas to approve the minutes of January 2011 as submitted.

Vote was unanimous.

The motion passed by unanimous vote to approve the minutes of January 2011 as submitted.

V. BUSINESS

**A. Update on Inadvertent Discovery of Burials, Individual Wastewater System Improvements, Kaumuali'i and Old Smith's Landing Sections, Wailua River State Park, Wailua Ahupua'a, Puna District. Kaua'i. TMK: (4) 4-1-04:24.**

Mr. Russell Kubota, the development manager/planner for the State Parks updated the KNIBC on the following:

- State Parks sent another letter to Ms. Waldeen Palmeira dated March 7, 2011 with subject of "Kaumuali'i and Old Smith's Landing Individual Wastewater System Project, Wailua River State Park, Kaua'i." Copies were distributed to the KNIBC. This letter addresses concerns for more clarity that Ms. Palmeira raised in her letters dated January 7, 2011 and January 12, 2011. Palmeira repeated her concerns including but not limited to environmental, cultural and significant sites in the project area.
- State Parks is planning to resume the project activities which ceased about August 2010. There will be more testing of the area to see the extent of any cultural resources in the proposed leach field. There will be an analysis after the testing which will determine if the footprint needs to be reconfigured (if there are more inadvertent burials).
- Mr. Kubota is the development manager for planning and noted that this project is funded only for improvements at the state park. The Kaumualii project was approved in 2004 and it complies with the Environmental Protection Agency (EPA) standards for the restroom. State Parks wants to cease use of the cesspool system.
- Due to the two inadvertent finds and any in the testing phase, the restroom at the Old Smith's Landing may need a redesign solution. This restroom is closed until there is a solution for an independent wastewater system. Currently both restrooms require high level treatment due to its proximity to the river – this is basically the leach field system versus an injection well for containment only. The current leach field work is about 10% to 20% started in one corner when it stopped due to the inadvertent burials encountered.
- KNIBC members inquired if the footprint could be smaller or if an injection well could be used instead. Kubota said there could be a smaller redesign however there will still be ground disturbances for utilities.
- There is public health and safety factor for the project and currently there are portable toilets for the public users. This has been an unexpected expense in construction.

- There has not been any costing made for an injection system should that be an option for a redesign. State Parks has to be in compliance with the public health concerns. Kubota said if need be the division will look at both systems for this project as options.
- Commissioner Fujita noted that the use of portable toilets have less impact on the environment and is a working option. Kubota said that temporary solution comes out of the project and there is no operational budget to maintain those temporary toilets (i.e., rental cost, maintenance, supplies). Kubota said that State Parks will have to look at other options should the proposed plan not work out.
- Vice-Chairman Keith Yap added that this is a sensitive area to many people with its high significance for cultural history. Yap asked why the project cannot hook up to the main sewer system and that would help protect the area. Yap added if it was necessary to have two restrooms near each other when one restroom could be sufficient and reduce the leach field size.
- Kubota said the State Parks wants to do the right thing here working with and complying with the information available. Kubota said with new information and discussion at the KNIBC meeting the division will re-look at the concerns raised. State Parks will consider all insights from everyone on testing to profile the area, and see what other options are feasible. However, Kubota noted that the funding is only for this project for the construction of restrooms.

**NOTE: The KNIBC meeting stopped at 9:42 a.m. due to lack of quorum when Commissioner Fujita stepped out for a minute. The KNIBC meeting resumed at 9:43 a.m. with Fujita's return to the meeting.**

- There were test pits at both restroom areas with no cultural finds at Kaumualii; and then the two inadvertent finds at the Old Smith's Landing. The State Parks used conventional soil testing methods with an archaeological monitor present. Discussion on how the blade scraped two or three feet of soil and how it may still impact future inadvertent finds.
- Mike Loo asked Kubota if they can re-use the old cesspool. Kubota said it is another possible option and it would have less impact. Kubota will have to check as the EPA required a larger area for this project. Kubota will consider options raised and discussed but prefer to keep the basic design. He noted any changes in disposal design would need approvals, any new design of the project will lose the funding and that they will do testing and analysis if it is appropriate to continue the proposed plan – if not, they will look at other options and all of this findings will be submitted to State Historic Preservation Division (SHPD). Kubota noted that this project was approved a few years back and it is funded partially by the State and a per cent by the Federal (NPS land and water funding). The project has lapsed on compliance on deadlines which has been extended for completion.
- Kruse asked how many test pits have been done. Kubota didn't have the exact number but will look up that information for the KNIBC.

## PUBLIC TESTIMONY:

- Cheryl Lovell-Obatake expressed her concerns that the funding match with the federal means that a Section 106 process be complied with on the project. She asked who did the testing and wanted to know if the Scientific Consultants Service (SCS) Inc. donated their time for this project. Obatake also asked where are the maps with the LCA and RP information on the names of people who lived there to be considered in the care of the two burials found there. For example, Obatake noted that in the Coco Palms project this area was included and the kuleana lands indicated the names of families associated with the area. She is very concerned that the current maps have deleted the names of the families associated with the areas. Further, Obatake wants to be assured there is perpetual protection of these burials in the complex. Ms. Obatake requested this item have some history on the TMK and if a notice was done for any descendancy claims with copies to her.
- Commissioner Kruse commented to Ms. Obatake that he works with the tax maps and there are many with the LCA and RP which he stated he has never erased. However there are also many maps that do not show how the smaller parcels are swallowed by the larger land owners, so it is important to get the correct maps and the history is still there. Also, some names are misspelled and it needs to be corrected else it is the wrong name/person on the map.
- Mahealani Sylva distributed a one-page map of the area being discussed. She discussed the LCA awards and that the RP was not on the map nor was there information on the LCA. Sylva noted that her family should be contacted and she will inform them so that one person can be contacted to represent the 'ohana. Sylva supported Obatake's testimony and reiterated that the Section 106 process must be followed on this project by State Parks.
- James Alalam stated he is a caretaker for one of the Wailua heiau. He shared a photo of the artifacts he found after the leach field work started. Alalam feels that the scraping of the blade is a desecration for possible burial finds and that na iwi needs to be protected from the damage a blade can do. Alalam does not trust the state or county archaeologist. He feels it '...take us guys to malama...our culture is disappearing...'
- Lahui Kanaka Manini (Uncle Joe) is considered about the burials and the land. Manini discussed fee simple land, ownership and land reformation before the Mahele and who had the authority to move or care for the burials. Manini said that State has no authority to move or care for the burials. He will meet with Kruse of the county and Kubota of state to talk about authority. Manini said that there are burials all over as the old folks buried in the yard and some are not sure if it is their family. He said the court recognizes a warranty deed that only he has.
- Waldeen Palmeira greeted the KNIBC in Hawaiian and shared that she is a Hawaiian language speaker and is inspired to use 'olelo Hawaii more after attending a burial council meeting on O'ahu. Palmeira expressed the following concerns:

- 1) there are possible alternative with least impact especially to decrease the large proposed footprint.
- 2) supports the testimony of the three persons before her.
- 3) asked if an attorney general should be required at the KNIBC meetings. [Staff explained that a request can be made but the AG also has budget cuts and usually attend if there is an attorney-client matter.]
- 4) requested a copy of the new DLNR Chairman's letter that names him as the official SHPO. [Staff is unsure what this document is.]
- 5) thanked Mr. Kubota for coming today with his updates. However, she questions the need for more testing, asked why people were not notified of the inadvertent burials find and did not want the blade to be used to scrape 3' testing.
- 6) hopes for some answers regarding her letter to Parks that no Section 106 consultation has been done yet (federal funding and NPS grant involved).
- 7) requested more testing put on hold or not allowed at all.

Discussion: Commissioner Kruse asked Mr. Kubota if there is a monitor during the testing. Kubota said yes State Parks is present. Kruse asked why not do the testing by hand instead of a backhoe. Kubota explained that a blade is used and the work is done by slowly scraping a little bit at a time with the archaeologist watching should any cultural resources be exposed. Kubota did not mean to imply that the blade is digging 3' down; it is slowly scraping the area with monitoring. State Parks has made it clear to the contractor to modify the blade and that the monitor is looking for any inadvertent finds.

- Lahui Kanaka Manini testified that the State is not the landowner, that the kanaka owns the land and that everyone is kanaka. Manini said that [Chairman] Aipoalani has no land authority but has authority to malama na iwi.
- Palmeira said the process is not right as the inadvertent burials found in September and no notification and it is now March 2011. Commissioner Fujita asked Kubota what happened after that the first inadvertent disturbed in September 2010 and all work stopped. Kubota said the contract archaeologist was there with the staff archaeologist and both recommended more testing of the area. The first inadvertent was discovered on August 17, 2010 and the second set on August 20, 2010. Work ceased then and the burials are left 'in situ.' There has been no activity on the project since then. Palmeira disagreed with the timeline. Note: Kubota will meet with Palmeira separately on her concerns.

## **B. A Draft Burial Treatment Plan for SIHP Site 946, Koloa Ahupua'a, Koloa District, Island of Kauai. TMK: 4-2-8-14:001 por.**

Dr. Bob Rechtman, archaeologist of Rechtman Consultants and Ms. Jody Allione of Poipu Solar presented information on the project and the draft burial treatment plan for SIHP 946. Rechtman summarized the plan to preserve the easement for the lava tube with a short stack stone wall and approximately 30' buffer zone. The draft burial treatment plan (BTP) showed on page 4 a schematic with the lava tube that has been re-surveyed since the first survey 21 years ago. Rechtman did publish a notice for three family names and three folks responded (Ted Blake, Branch, Mark Coleman) to consult on the lava tube burial.

Rechtman did consultation with the Koloa folks and the following was requested:

- The permanent preservation buffer and easement will be 30 feet out from the tube edge.
- A low 2' dry stack stone wall on the perimeter to mark the preservation area (where current link fence is located) with one access entry. Suggested ti plants in the area.
- Access is through a secure gate where all the solar panels are located. Access afforded to recognized claimants who should call the office at least 48 hours prior.

Discussion on the following items:

- This project does not block any part of Hapa Road.
- There will be a sign on the front gate on whom to contact for access.
- The dry stack stone wall should have more native plants conducive to the area's dry and pahoehoe conditions.

## PUBLIC TESTIMONY

- Kalanikumai O Na Alii Hanohano stated his family lineage from the Koloa families, that he is seventh generation from Nahinu. He was recognized as a cultural descendant of the Koloa by SHPD in 2008 when there was a similar lava tube burial in Koloa with a burial treatment plan. Kalanikumai sees this draft burial treatment plan as significant as it reclaims the cultural significance of the lava tube in the presence of wai (water) which is precious in that dry climate; the wai is seepage rather than a running stream. Native plants for this area should not require too much water. All agree that the lava tube is a repository for na iwi. The boulder platform near the road is a former site with features and should not be impacted by the road. The ridge southeast of the tube opening is significant too. Access for recognized descendants of the area and they should approve of other practitioners who may want to go there. Kalanikumai wants a more flexible access or a key to access with parking nearby --- a flexible time as Hawaiians did rituals at certain times like sunrise, midnight etc. The descendants and other native Hawaiian groups should help with the maintenance and plantings there. There should be signage with Kapu and appropriate wording at the gate and at the lava tube opening. Kalanikumai summarized his concern for the cultural maintenance of the preservation area, the lava tube as a repository, the boulder use as significant and to maintain flexible access. His mana'o on the ridge area (see page 8 & 9 in the BTP) is the boulder platform is on the pavement and perhaps a possible habitation area in prehistory times. Kalanikumai notes that the seepage of water from the ridge into the bowl-like feature is significant as water was rare there. This is a kipuka where water is a treasure and should be preserved for future generations. Note: Rechtman stated it is a natural pahoehoe feature there.
- Ted Blake stated he is a descendant of the area, a director of Malama Koloa (the Hui) which is a consortium of various community groups in Koloa. Their focus is on the maintenance and easement of Hapa Road and the trail (cleared by the group). There have been many developments in Koloa and they are striving to care for the many significant sites therein. This current project will border the Hapa Trail and Malama Koloa has been working with the developer. Blake said the burial tube is not part of the developer's lease however with the landowner's okay, the developer is submitting the draft BTP to the Koloa community to do the right thing. Blake is in favor of the short dry stack wall around the site and the chain link fence for the project security. The Hui will malama the dry stack wall (rocks from Hapa Road and area to be used) in working with the project developer. Blake spoke about the Koloa field system as unique and using the lava flow for agricultural purposes by the ancestors of Koloa. Blake would like to see native and

indigenous plants used in the area that can flourish in the dry pahoehoe conditions. The Hui will be applying for stewardship of this area and work with the landowner/project developer. Blake added that his 'ohana had lands there and many 'ohana still live there and they reviewed and approve the draft BTP submitted. Blake said access is reasonable and allowed with reasonable notice. Blake said this is the most a developer has done for the community in cooperation and in respect shown working together.

- Jody Allione represented Poipu Solar and noted that the project will be solar panels for up to 3.8 MW sell back to KIEC on a 20-year base using above ground lines. They will work on using 6' plantings to landscape the area with xeriscape plants and others that are suitable for the area. A study done by Geolabs and Rechtman was done to ensure no other lava tube run under the project and found it is solid rock under the proposed project area.
- Blake stated that Malama Koloa is composed of various community peoples and is a native Hawaiian non-profit that meets the definition of a Native Hawaiian Organization (under federal burial law in NAGPRA).
- Kalanikumai said the quickest access is through Grove Farm side as his Tutu gathered la'au, cultural materials and water for many years there. He agrees with use of native plants, keeping the seepage area, yet prefers a more flexible access time with at least 48 hours notice.
- Rechtman said this is a burial treatment plan and does not include or look at gathering rights at the tube area. In the BTP on page 12, there is a discussion with the landowners agreeing to access to the tube (burial site). Kalanikumai said it is a wahi pani with the burial site and the rare water seepage there.
- Blake noted there is two access choices here – through the project's chain link fence gate (with access notice) or walk along the original fence line of the property. Blake is okay with access notice – perhaps 48 hours is too long. Vice-Chairman Yap agreed that the chain link fence is necessary for the security of the facility and that access and notice be worked out reasonably.
- Uncle Joe Manini said in north and south Koloa there are tenancy lands that he alone is the surviving tenant with the audited warrant deed.

**KNIBC SUMMARY OF THE DRAFT BTP that will clarify the following:**

- 1. Accept the buffer be at a minimum of 30 feet from the lave tube edge.**
- 2. Accept the draft BTP preservation plan at the lava tube containing a possible burial.**
- 3. That the access be reasonable and worked out with the solar company and Koloa Hui regarding whom to call, when gate will be unlocked for access, and so on.**
- 4. There should be signage on the gate with the information on access protocol.**

Motion by Keith Yap, seconded by Mike Loo to accept the draft Burial Treatment Plan for SIHP Site 946 in Koloa at TMK: 4-2-8-14:001 por. as discussed for clarity and as submitted.

Vote was unanimous to accept the aforementioned motion.

The motion passed by unanimous vote of the KNIBC.

## **VI. INADVERTENTS**

SHPD Archaeologist Mike Vitousek reported on the following inadvertent finds:

- A.** Anini Beach fragments (fibia, 50+ old) from wave erosion on February 23, 2011. Jim Powell of SCS Inc. provided 'pro bono' work for the SHPD to recover the fragments and relocate at the tree line. Powell did an area sweep to ensure no other fragments on the beach, and then coordinated with SHPD to reinter above the berm. Mahalo Jim!
- B.** Several calls re tsunami surge action revealed bones as follows:
- On 3/12/11 the day after the tsunami at Moloaa revealed a human mandible. Kauai Police Department called to retrieve the mandible. KPD consulted with SHPD. SHPD will go to KPD after this meeting to assess if 50+ old and if so, will have it stored in Kauai SHPD facility till reinterment is arranged.
  - On 3/16/11 at Nukolii by the Hilton hotel, cow bones were revealed in the sand. KPD was called upon discovery and secured the area till an archaeologist from Cultural Surveys Hawaii/Kauai provided 'pro bono' work to make the determination. Mahalo CSH!
  - On 3/16 adjacent to the river dredging work in a trench a small mandible was found on the surface. McMahon volunteered to go out and determined its possible 'modern' and turned over to the medical examiner/KPD. SHPD will go to KPD after this meeting to assess this inadvertent.

## **VII. ANNOUNCEMENTS**

- A.** Chairman Aipoalani distributed copies of the Summit summary sponsored by OHA some months ago. Aipoalani recommends more of the KNIBC attend the next one (to be announced) and participate in making the state burials law stronger.
- B.** Vice-chairman Yap reminded the KNIBC that he continues to attend the Section 106 consultation meetings regarding the Kuhio Highway project. Yap also encouraged others to attend if possible.
- C.** SHPD reminded the KNIBC to continue to recruit possible applicants for the council and to maintain a list of interested folks. The application is on-line at [www.hawaii.gov/dlnr/shpd](http://www.hawaii.gov/dlnr/shpd).

## **VIII. ADJOURNMENT**

Motion by Vice-chairman Keith Yap and seconded by Jimmy Fujita to adjourn the meeting. The vote was unanimously in favor of the motion.  
The motion passed to adjourn the meeting at about 12:15 p.m.

NOTE: The next KNIBC meeting is scheduled for the third Wednesday, 20 April 2011. #